It is necessary for me to emphasize that there is no allegation that the deceased had not properly executed the instrument of transfer and there is absolutely nothing to show that he had not intended to execute a transfer to Manomani as trustee. The evidence on this point is, I think, overwhelming. Mr. E. J. Lawrence drew up the deed of trust at the request and instructions of the deceased and the deed was executed in his presence by both the deceased and the respondent. Clause 2 of the deed specifically provided that the donor shall soon after the execution of the trust deed execute a transfer in the name of the trustee who shall hold the property in her capacity as trustee.

I am therefore firmly of the view that mere irregularity in regard to attestation devoid of any intention on either the transferor or the transferee to deceive or perpetuate any fraud and, furthermore, considering the fact that the instrument executed had in every respect conformed with and truly set out the intention of the parties, there is indeed no ground whatever to say that the instrument is not a fit instrument for registration and is therefore void or insufficient.

As for the allegation of fraud no particulars of fraud have been set out and there is, to my mind, absolutely no evidence to support that allegation.

The applicant sought to argue that reference to "*pemberian kapada anak*" was false because it was a gift by the deceased to himself during his life and subject to his direction thereafter to the child. Whatever might have been the terminology used in the memorandum of transfer it seems clear that on proper construction of the deed of trust it is the deceased's implicit intention all along soon after the execution of the trust deed to execute a transfer in the name of the trustee who shall hold the property in her capacity as trustee.

Datuk Athi Nahappan counsel for the respondent submitted that the trust deed was created by the deceased for his daughter and he made the former wife trustee. This is clear from the deed and it could only be defeated on grounds of lack of certainties as to subject-matter, object and the words used. It is clear that the daughter is the subject of the trust, and the property, which is the object, has been clearly defined. There is also no uncertainty as to whom the property should be transferred as trustee. He also submitted that although there have been some inconsistencies in regard to the words used the deceased had made it abundantly clear that the gift was meant for the daughter and it was not unusual for the father to enjoy the property during his lifetime. Datuk Athi Nahappan further submitted that this was a voluntary gift for love and affection and it was a complete trust the moment the property was transferred to his former wife as trustee and was therefore valid and enforceable.

I see no reason to disagree with the view expressed by Datuk Athi Nahappan. As the gift came from a father to a daughter there is also, in law, a well-recognized presumption of advancement. Speaking of equitable doctrine of advancement, Viscount Simonds in *Shephard* v. *Cartwright*[1] had this to say —

"... I think that the law is clear that on the one hand where a man purchases shares and they are registered in the name of a stranger there is a resulting trust in favour of the purchaser; on the other hand, if they are registered in the name of a child or one to whom the purchaser then stood in *loco parentis*, there is no such resulting trust but a presumption of advancement. Equally it is clear that the presumption may be rebutted but should not, as Lord Eldon said, give way to slight circumstances: *Finch* v. *Finch* (1808) 15 Ves. 43."

The presumption was applied in *Palaniappa Chettiar* v. *Arunasalam Chettiar*[2] where Lord Denning speaking of transfer by father to son said —

"He had not only to get over the fact that the transfer stated that the son paid $7,000 for the land. He had also to get over the presumption of advancement: for whenever a father transfers property to his son, there is a presumption that he intended it as a gift to his son: and if he wishes to rebut that presumption and to say that his son took as trustee for him, he must prove the trust clearly and distinctly, by evidence properly admissible for the purpose, and not leave it to be inferred from slight circumstances, see *Shephard* v. *Cartwright, supra*, at p. 445. The fact that the father received the income does not suffice. see *Commissioner of Stamp Duty* v. *Byrnes* [1911] A.C. 386."

Before I conclude may I say that it is also common ground that the transfer was registered on August 13, 1970 by the Deputy Registrar of Titles, Petaling Jaya and Manomani as trustee became the registered proprietor. It would seem to me her title is not, in law, indefeasible if the applicant can show fraud or misrepresentation to which either the transferor or the transferee was a party, or, the registration was obtained by means of insufficient or void instrument. For reasons that I have stated earlier it is my finding that the applicant has neither satisfied me that there is fraud nor succeeded in showing that the instrument was not fit for registration.

In my judgment the trust deed executed by the deceased on June 26, 1970 was a valid trust and could support the consideration for effecting a good and valid registrable memorandum of transfer. It is also my judgment that the memorandum of transfer was an instrument fit for registration and the respondent having been registered as trustee her title is good in law and indefeasible.

The application is hereby dismissed with costs.

Application dismissed.

Solicitors: *Chelvanayagam & Co.; Athi Nahappan & Co.*

FOON MOON YEOW & ANOR. v. TAN SEK KEE & ORS.

[O.C.J. (Sharma J.) January 16, 1973]

[Ipoh — Civil Suit Nos. 409 & 410 of 1970]

Damages — Fatal accident — Loss of expectation of life — Adult and children — Same basis.

Loss of expectation of life is a loss in respect of expectation of life whether of adults, infants or the aged and there is no reason why it should remain at a low, arbitrary and artifical figure. Damages in respect of loss of expectation of life for both adults and children should be awarded on the same basis and no difference should be made on the computation of such damages.

In this case one adult and five children had been killed in an road accident. The learned judge awarded $3,500 for loss of expectation of life in respect of each of the six persons.

Editorial Note: The 2nd and 3rd defendants appealed against Sharma J's decision on liability and quantum of damages to the Federal Court (Federal Court Civil Appeal No. 30 of 1973, Azmi L.P., Gill and Ong Hock Sim F.JJ., Ipoh, August 20, 1973). In an oral judgment the Federal Court dismissed the appeal.

Case referred to:

(1) *Cain* v. *Wilcock* [1968] 3 All E.R. 817.

CIVIL SUITS.

M. Sivalingam for the plaintiffs in Civil Suit No. 409/70 and the defendants 4 and 5 in Civil Suit 410/70.

Phillip Leong for the defendants in Civil Suit No. 409/70 and the defendants 2 and 3 in Civil Suit 410/70.

David Tay for the plaintiffs in Civil Suit No. 410/70.

Sharma J. (delivering oral judgment): On the 11th October, 1969 there was an accident at the 13¾ milestone Ipoh-Kampar Road between a lorry AL7619 and a car AC2969. The time was about 6.15 a.m. The lorry was proceeding in the direction of Ipoh while the car driven by Foong Boon Kuan was proceeding in the direction of Kampar. As the result of this accident the driver of the car as well as the driver of the lorry met their death. In the car were the following passengers all of whom except for Foo Chak Yin (DW2) met the same fate as the driver of the car. They were (1) Yew Wai Meng, aged 35, (2) Foong Yew Foo, aged 13, (3) Fong Lai Kim, aged 12, (4) Foong Yew Fatt, aged 10, (5) Fong Lai Leng, aged 9, and (6) Foong Yau Wai, aged 8. Tan Sek Kee was the owner of the lorry. It has, however, come to light in the course of these proceedings that after the two suits had been filed he had also died. He was defendant No. 1 in both the suits. His name as a defendant was consequently struck out on the 28th September, 1972.

The plaintiffs in Civil Suit No. 409 of 1970 are the administrators of the estate of Foong Boon Kuan who was the driver of the car and defendants Nos. 2 and 3 in the said suit are the administrators of the estate of Teoh Sek Ling, the driver of the lorry.

The plaintiffs in Civil Suit No. 410 of 1970 are the administrators of the estate of the six passengers referred to above who died while they were travelling as passengers in the car AC2969. Defendants 2 and 3 in this suit are the same as defendants 2 and 3 in Civil Suit No. 409 of 1970 while defendants 4 and 5 in this suit are the plaintiffs in Civil Suit No. 409 of 1970.

[The learned judge proceeded to deal with the evidence produced. In the circumstances of the cases, he held the driver of the lorry exclusively liable for negligence and to be entirely blamed for all the deaths which resulted in this accident. He then continued:]

In Civil Suit No. 409 of 1970 it has already been agreed that should there be negligence of the lorry driver without any contributory negligence on the part of the driver of the car the plaintiffs should be entitled to damages in the sum of $6,000. By consent plaintiffs are also to get $300 on account of the costs of obtaining letters of administration. There will thus be judgment for the plaintiffs in the sum of $6,300 in Civil Suit No. 409 of 1970.

As regards Civil Suit No. 410 of 1970, special damages have already been agreed at $5,700. All that remains for me to do is to assess the damages for loss of expectation of the lives of the six persons who were passengers in the car and who were killed in the accident. The Court of Appeal has already held that the "conventional" figure for loss of expectation of life in respect of a young adult should be $3,000. I am also fully cognizant of the fact that the courts are in the habit of awarding lesser sums for loss of expectation of life in the case of infants or persons of very immature age. There is, on the other hand, the inescapable fact that in this age of advanced medical knowledge and progress the rate of infant mortality may be said to have been very considerably reduced or diminished and the hope of living up to a ripe old age has almost reached a point of realisation. Loss of expectation of life is a loss in respect of expectation of life whether of adults, infants or the aged and speaking for myself I see no reason why it should remain at a low, arbitrary and artificial figure. It seems that the trend in England is that damages in respect of loss of expectation of life both for the adults and children are awarded on the same basis and no difference is made in the computation of such damages. (See *Cain* v. *Wilcock*[1]). We are regretably, perhaps by training or a tendency to follow only that which happens in the courts in England, loath or slow to take an initiative of our own and evaluate our lives or loss. I would award $3,500 for loss of expectation of life in respect of each of the six persons killed in the accident. In the result there will be judgment for the plaintiffs in Civil Suit No. 410 of 1970 in the sum of $26,700 and costs. Defendants 2 and 3 will also pay the costs of defendants 4 and 5 in Civil Suit No. 410 of 1970. The plaintiffs are also entitled to interest at the rate of 6% per annum as from the date of the filing of the respective writs.

Order accordingly.

Solicitors: *Lim Cheng Ean & Co.; Cheang Lee & Ong; Murphy & Dunbar.*